`IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1078 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE MD SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RAMJANI YAKUBBHAI SHAIKH - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

==========

Appearance :

THROUGH JAIL for Appellant(s) : 1,
MS BANNA S DUTTA for Appellant(s) : 1,
MR RC KODEKAR, APP for Opponent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 06/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. This appeal has been filed by the present appellant-original accused, who has been convicted and sentenced in Sessions Case No.10 of 2006 by the learned Principal District Judge, Gandhinagar, for the offence punishable under Secs.302 of IPC to suffer for life and to pay fine of Rs.10,000/-, in default, to suffer 2 years SI and for the offence punishable under Sec.324 of IPC to suffer for 2 years RI and to pay fine of Rs.10,000/-, in default, to suffer 3 months SI. Both the sentences were ordered to run concurrently.

2. The case in short is that on 29-10-2005 at about 5.30 pm., the complainant after purchasing fruits near Pansar three roads was going to his house and his friend Abdulkadar Hussainmiya Sayyed, who was walking ahead, was also going to his house. When they reached near Gulabbhai Palangvala Shop, the appellant-accused Ramjani Yakubbhai Shaikh,

who was standing, came running towards the victim and took out knife from his waist and inflicted knife blows on various parts of the body of the victim with a specific threat that “today I will not leave you”. To save the victim, the complainant and the nephew of victim Arifkhan Ahmadmiya Sayyed and Anwarkhan Hyderkhan Pathan also reached there. As the appellant was furious, he gave knife blows to nephew of complainant i.e. Arifkhan Ahmadmiya Sayyed also and as a result of that, victim fell down. Thereafter, after throwing the knife at the scene of offence, accused ran away from the scene of offence. Thereafter, the complainant took the victim Abdulkadar Hussainmiya Sayyed and injured Arifkhan Ahmadmiya Sayyed to the Municipal Hospital in an autorickshaw where victim Abdulkadar Hussainmiya Sayyed succumbed to the injuries while his nephew Arifkhan Ahmadmiya Sayyed Abdulkadar was treated. It is also the case that accused Ramjani had illicit relation with the wife of

brother-in-law of the deceased and, therefore, accused had killed the victim. Thereafter, complaint to that effect was lodged with Kalol City Police Station by the complainant and it was registered as Kalol City Police Station I.C.R.No.91 of 2005 for the offences punishable under Secs.302 and 324 of IPC and Sec.135 of Bombay Police Act and I.O. started investigation into the matter. He went to the hospital and completed inquest panchnama Ex.27 in presence of panchas. He prepared panchnamas of clothes of complainant, injured Arifkhan Ex.31 and also of scene of offence Ex.22. He made search in the house of accused after drawing panchnama Ex.32 to that effect. He also seized cloth wore by the deceased by way of Ex.34 and also seized knickers alleged to have been worn by the deceased at the time of incident by way of panchnama Ex.35. He also seized cloth of the accused by way of panchnama Ex.24 and arrest panchnama of accused by way of Ex.36. He also collected injury

certificate of injured Arifkhan Ex.12 and post mortem of deceased Ex.11. He also sent the muddamal which he seized to FSL by forwarding letter Ex.28. On receiving the FSL report ex.37 and post mortem report Ex.11, same were kept in the investigation file. At the end of investigation, charge sheet was submitted against the appellant into the Court of learned Judicial Magistrate (First Class), Kalol. As the offence was exclusively triable by Court of Sessions, learned Magistrate committed the case to the Court of Sessions where it was numbered as Sessions Case No.10 of 2006. Learned Principal District and Sessions Judge, Gandhinagar, framed charge at Ex.3 against the accused. The charge was read over and explained to the accused. The accused pleaded not guilty to the charge and prayed for trial.

3. To prove the charge against the accused, prosecution examined the following witnesses: 1)P.W.1, Dr.Jagdishbhai Nanjibhai Tank, Ex.10, the doctor who performed post mortem

on the dead body of the deceased.

2)P.W.2, Mahemadyunus Ganibhai Mansuri, Ex.13, the complainant, eye witness and also friend of deceased.

3)P.W.3, Arifhussain Ahmadmiya Sayyed, Ex.17 injured eye witness and also nephew of deceased.

4) P.W.4, Jiyauddin Umedbhai Malek Ex.18, panch of panchnama of scene of offence.

5) P.W.5, Abdulkadar Nayimbhai Malek, Ex.23, panch of panchnama of seizure of cloth of accused.

6) P.W.6, Shaktisinh Ganshyamsinh Parmar Ex.26, the investigating officer.

The prosecution also placed reliance upon following documentary evidences:-

i) Complaint Ex.14,

ii) Telephone vardhi Ex.30,

iii)inquest panchnama Ex.27,

iv)panchnama of seizure of cloth of injured and complainant Ex.31,

v)Map of scene of offence Ex.32,

vi) Panchnama of search of house of

appellant-accused Ex.33,

vii) Panchnama of scene of offence Ex.22,

viii)panchnama of seizure of cloth of deceased Ex.34,

ix)Panchnama of knickers of deceased Ex.35,

x) Panchnama of seizure of cloth of accused alleged to have been worn at the time of incident Ex.24,

xi)Arrest panchnama of accused Ex.36

xii) Injury certificate of injured Arifkhan Ex.12

xiii)Post mortem note of deceased Ex.11,

xiv)Forwarding letter written to FSL Ex.28,

xv)Receipt issued by FSL showing receipt of muddamal Ex.37,

xvi)Report given by FSL Ex.29,

4. On submission of closing purshis by the prosecution, learned Principal District and Sessions Judge, Gandhinagar, recorded further statement of the accused under Sec.313 of Cr.P.C. and asked the incriminating question to the accused. Thereafter, after hearing the learned counsel appearing for the respective

parties, learned Sessions Judge delivered the aforesaid judgment and order of conviction and sentence which is giving rise to prefer the present appeal.

5. When it was received by the Registry, it has been numbered as Criminal Appeal No.1078 of 2006 and handed over to learned counsel, Ms.Banna S.Dutta who was appointed as amicus curiae and when it was placed on the board for admission, we have called for the record and proceedings.

6. Ms.Banna S.Dutta has argued the appeal on the basis of record and proceedings which she is having and also on the basis of record and proceedings called for by us. Learned APP, Mr.R.C.Kodekar has also argued the matter.

7. Ms.Banna S.Dutta has focussed her arguments on the evidence of complainant, P.W.2, Mahemadyunus Ganibhai Mansuri, Ex.13, injured witness, Arifhussain Ahmedmiya Sayyed, P.W.3 at Ex.17 and also on the evidence of Dr.Jagdishbhai Nanjibhai Tank, P.W.1, Ex.10, the doctor who examined and conducted post

mortem on the dead body of deceased as well as on the oral evidence of Investigating Officer, Shaktisinh Ganshyamsinh Parmar, P.W.6, Ex.26. She has also taken us through various documentary evidences namely complaint Ex.14, telephone vardhi Ex.30, injury certificate of injured Arifkhan Ex.12, post mortem note Ex.11, FSL report Ex.29. She has also taken us through the reasoned judgment delivered by the learned Principal District and Sessions Judge, Gandhinagar.

8. It is mainly argued by her that the appellant-accused has been falsely involved in the crime. According to her, injuries alleged to have been received by the injured eye witness are self-inflicted injuries. She has also raised dispute regarding the blood groups 'O' and 'AB'. The complainant is the friend of the deceased and the injured witness is the nephew of the deceased and hence, according to her, the witnesses are interested witnesses. Though the incident has been taken place very near to the shop of

Gulambhai Palangwala, said person has not been examined by the prosecution. Moreover, no motive has been proved in this case. In view of the above, it is requested that the matter requires consideration.

9. Learned APP, Mr.Kodekar, however, has supported the judgment and order of conviction and sentence delivered by the court below and contended that the appeal does not require any consideration and it deserves to be dismissed.

10. We have gone through the oral as well as documentary evidences shown to us by the learned counsel for the parties together with the well reasoned judgment and order delivered by the learned District and Sessions Judge, Gandhinagar. Initially, learned Judge has dealt with the law regarding appreciation of evidence on the basis of law laid down by the Apex Court in the case reported in 1998 SCC(Cri) page 148 in the case of Anil Singh Vs. State of Uttar Pradesh.

11.We have also gone through the oral evidence of injured eye witness i.e. Arifhussain Ahmedmiya Sayyed, P.W.No.3, Ex.17, wherein he has categorically deposed that on 29-10-2005 he and one Abdulkadar Hussainmiya Sayyed, after buying fruits were going to their houses. When they reached very near Pansar three roads, the appellant-accused was standing there and he came running towards the victim and took out knife from his waist and inflicted knife blows on various parts of the body of his uncle. While inflicting blows, he was shouting, “today I will not leave you and I will kill you” and, therefore, he intervened to save his uncle. At that time, the appellant accused gave knife blows on his neck, hands and other parts of the body and his uncle was seriously injured and fell down. Therefore, he, the complainant and Anwarmiya took him to the hospital in an autorickshaw while the appellant-accused after throwing knife at the scene of offence ran away. The doctor

examined his uncle and thereafter declared him dead. According to him, his uncle has received injuries on various parts of his body including vital parts. He has deposed that the appellant had illicit relation with the wife of brother-in-law of his uncle and since his uncle was objecting the same, he has been killed. He has also deposed regarding the presence of other eye witnesses including the complainant. He has also identified muddamal article No.7-knife and categorically deposed that the appellant was having the same at the time of incident and he used the same in inflicting injuries on various parts of the body of the deceased and also on him. He also identified the cloth which he has worn at the time of incident along with the cloth of the accused as well as of the deceased. He has been thoroughly cross examined by the learned counsel for the appellant-accused but nothing contrary has come forth which shake his evidence.

12.It is established from his evidence that the

accused, witnesses and deceased were staying in the same vicinity and the incident has been taken place in broad day light at 5.30 p.m. on 29-10-2005. Witness Arifhussain has not been able to show with certainty as to on which part of the body of the deceased was the first blow given by the accused. It is but natural that one may not remember all the blows having given by the accused especially when the incident has been taken place abruptly and also when number of blows are given by the appellant. Apart from that, there is no other material to be dealt with by this Court.

13. Same way, the complainant-Mahmad Yunus Ganibhai Mansuri has also been examined as P.W.No.2 at Ex.13. He is also the eye witness and friend of deceased. He has deposed in the same and totally supported the say of the prosecution as well as the injured witness. He is also the person who took the deceased and the injured into the hospital in an autorickshaw and also lodged FIR at the

earliest. He has categorically deposed that the appellant accused is a habituated offender. In past also, he has involved himself in a murder case where he was convicted and he came out from jail before four months and this incident has taken place. Through him, prosecution has proved complaint Ex.14. He has also identified the muddamal article No.7 and clothes of the victim, injured as well as of the accused. He has stuck to is version even during the cross examination also.

14. Prosecution witness No.1, Dr.Jagdishbhai Nanjibhai Tank, the doctor who performed post mortem on the dead body of the deceased, has been examined at Ex.10. Through him, prosecution has proved injuries numbering 10 alleged to have been received by the deceased as well as the injured person and same have been narrated by him in his oral evidence. Prosecution has also proved post mortem note Ex.11. He has also given opinion after seeing muddamal article 7-knife that the injuries

received by the deceased and the complainant are possible by this muddamal. As far as injuries three in number received by the injured eye witness are concerned, injury Nos.1 and 2 are possible by way of muddamal article No.7-knife. He has also deposed that injuries Nos.2,3,4 and 7 are on vital parts of the body and out of that, injury Nos.2 and 4 are grievous injuries. He has also proved corresponding injuries and through him, prosecution is able to prove that the death of the deceased was homicidal and same has not been seriously disputed by the learned counsel for the appellant. Once it has been proved that the death of the deceased was homicidal, then question comes can the appellant-accused be held responsible for the same. The answer is in affirmative in view of the oral evidence which we have discussed above more particularly oral evidence of injured eye witness and complainant along with the documentary evidences.

15.Now the only aspect to be dealt with is the

contention raised by the learned counsel into the court below as well as before this Court regarding the blood group. It is to be noted that blood group of the deceased was 'O' while blood group which has been found on the muddamal article No.7 was 'AB'. It is also required to be noted that the injured is having the blood group 'AB'. It has been dealt with by the court below in para 14 of the judgment in a similar way. We have gone through the same and we are totally in agreement with the reasoning given by the court below. Apart from that, it is clear that the accused had assaulted the deceased with knife and thereafter with the same knife, he had assaulted the injured witness who is having the blood group 'AB'. Even cut mark on the clothes and the injuries sustained tally with the muddamal article No.7. Not only that, Dr.Jagdish has deposed the same on that point and nothing has been come out in his cross examination to that effect. As we have stated earlier, cogent

reasons have been given by the court below. Over and above, we can say that same knife has been later on used by the accused in causing injuries on the injured witness having the blood group 'AB'. Apart from the above, there are two eye witnesses who are known to each other.

16. It is to be noted that the incident has taken place in broad day light. The weapon used in the commission is also tallying as stated earlier with the injuries sustained by the deceased and cut mark found on the clothes having the human blood. Not only that, the clothes of the complainant were also having blood stain marks and, therefore, we cannot say that the complainant and the injured are got up witnesses. Moreover, injuries received by the injured eye witness are such which cannot be possible by way of self inflicted injuries.

17. On an evaluation of the entire evidence appearing on record, we are of the opinion that prosecution is able to prove the case

against the accused and therefore, the impugned judgment and order of conviction and sentence delivered by the court below being just and proper do not call for any interference. Under the above circumstances, appeal is required to be dismissed.

18.The appeal is dismissed.

[R.P.DHOLAKIA,J.]

[M.D.SHAH,J.]

radhan